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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,400	07/19/2001	Wesley M. Mays	B-70985	9906
32914	7590	01/07/2005	EXAMINER	
GARDERE WYNNE SEWELL LLP INTELLECTUAL PROPERTY SECTION 3000 THANKSGIVING TOWER 1601 ELM ST DALLAS, TX 75201-4761			ABEBE, DANIEL DEMELASH	
		ART UNIT		PAPER NUMBER
		2655		
DATE MAILED: 01/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/909,400	MAYS, WESLEY M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel D Abebe	2655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-21 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ . | 6) <input type="checkbox"/> Other: ____ .  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinzon (6,161,005) and in view of Mattes et al. (6,380,842)

As to claim 1, Pinzon teaches a door operating system (Fig.1) for moving a latch (3) between open and closed position, including:

An operator mechanism (2) coupled to door latch (3);

A base controller (4) coupled to the operator mechanism for moving the door;

Remote controller (12) adapted for transmitting IR or RF code signals to the base controller receiver (7).

Pinzon teaches where the operator system arrangement includes speech recognition and where codes are transmitted from the remote controller to the controller. Pinzon, however, appears to let the user use his fingers by pushing the corresponding keypads on the remote controller and doesn't explicitly teach where speech recognition is located with in the remote controller. However, remote controllers having speech activated-recognition system are notoriously common and well known in the art. Mattes, for example, teaches a door operating system for opening and closing a door, comprising an electronic key (remote controller (2)) for remotely controlling the door

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operating system wherein the remote controller includes speech recognition for generating the operating signals from a voice command (Col.8, lines 10-23; Fig.3, 42). Therefore, one skilled in the art would appreciate the advantage of modifying the remote controller in Pinzon's art, especially in view of Mattes, for the purpose of allowing the user to speak the commands instead of manually pressing the keypads.

With respect to claims 2-7 and 11, Pinzon teaches where the remote controller (Fig.5, 61) having a circuit connected to the keypads includes RF transmitter (Fig.2, 33) for connecting with the base controller (28) by transmitting the codes to operate the doors and also where the remote controller could be hardwired to the base controller (Fig.2a, 22).

And Mattes teaches where the remote controller includes an RF and IR transmitter having its circuit connected to a micro-controller (21) and the speech recognition module (42) and keypads (14-16) (Col.5, line 18; Fig.3).

As to claim 8, Mattes teaches where the remote controller includes a microphone (43) for receiving voice commands including commands to open and close the doors and operating other adjacent functions (Col.51-60).

As to claim 9, Pinzon teaches where the door opening and closing system includes garage door (Fig.5, 71).

As to claim 10, Official Notice is taken that speech recognition having speaker dependent mode is well known and would be obvious to include in Pinzon and Mattes art for security purpose.

As to claims 12-13, Pinzon teaches where the remote controller (61) includes keypads for opening and closing garage door (71).

Claims 14-21 are analogous to claims 1-13 and are rejected for the foregoing reason by Pinzon in view of Mattes.

### ***Response to Arguments***

Applicant's arguments filed have been fully considered but they are not persuasive.

Here applicant should realize that Pinzon suggests where speech recognition could be used to interpret voice commands using, inherently, spoken words for operating/effecting doors including garage doors.

This is amply explained by Pinzon accordingly "Having thus described various preferred embodiments of the invention, those skilled in the art will appreciate that variations and modifications of the preferred embodiment may be made without departing front the scope of the invention. For example, instead of relying on DTMF tones to transmit codes, speech decoder circuitry could be included within the door for actuating the motor or solenoid in response to voice signals transmitted over the network, with authentication of the voice signals being provided by a spoken password or by voice recognition software".

In response to applicant's argument regarding, where Mattes doesn't not teach using spoken words for effecting operation of a barrier, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it

meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In this regard there is no structural difference between the claimed remote controller and that of Mattes, except they are used for similar but different purposes, resulting to have a different vocabulary. This (having a different vocabulary) however, is moot in view of Pinzon since the remote controller of Pinzon have a speech recognition mechanism which requires the vocabulary in order to open and close (control) the garage door.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel D Abebe whose telephone number is 703-308-5543. The examiner can normally be reached on monday-friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on 703-305-4827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel Abebe Primary Examiner A.U. 2655



December 29, 2004